

NO. 83-243

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

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BROWN & ROOT, INC., ET AL, PETITIONERS

v.

BILLY THORNTON AND JAMES H. BROUSSARD, ET AL

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT

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BRIEF OF RESPONDENT JAMES BROUSSARD AGAINST CERTIORARI

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WILLIAM P. RUTLEDGE  
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#### RESPONSE OF JAMES BROUSSARD

This was family labor. The parent was the employer. There was no organizational lines, no jurisdictional lines, no union contracts to fall back on. James Broussard had to do everything. He built the loadouts. He loaded out the loadouts. He went aboard the vessels to lash down the loadouts by welding them to the deck because they were so big he could not lash them down any other way. He had to do anything his employer said for him to do; and his employer said for him to do longshoreman work, load cargo and lash it down. If he had not loaded cargo, he would have been fired without recourse. If he had not lashed cargo, the same. He could not say, "Look, I work on shore, building these things; I'm a union welder; if you want somebody to load them out, get somebody to load them out; if you want somebody to lash them down, get somebody to lash them down; I'm standing pat with my foot on a union contract which says you can not fire me for not helping your load or lash."

It seems the employer says, "We either make him a longshoreman or make it where his family does not eat if he does not do the loadouts; but he's not a longshoreman when he comes to the longshore benefits that he has to get for his family to eat on when he's hurt." Estoppel.

James Broussard's labors of loading and lashing cargo are not freak labors of emergency, fortuity, or casualty. They are routine labors that have to be done on each and every job that his employer does.

The cargo is used in connection with maritime  
itself. Loading and lashing itself is maritime.

It is not the frequency of how often James Broussard himself did it, its the frequency of how often it had to be done; and it had to be done on every job. Without such maritime activity the employer would have had to shut the yard down.

His employer has the rose of unorganized labor; estoppel says it has the thorn, if that is what it is.

Everybody seeks to create the impression that James Broussard is a union welder standing there polishing his union button when there is nothing else to do on shore; there is never a time when there is nothing else to do; there is always loading and lashing and James is always doing, or his counterparts are always doing it. The only fortuity is whether James is at work at the time the loading and lashing is going on; if he is, he does it; if he does not, he gets run off.

We consider this a case of first but only one impression. Again, as for frequency, it is not how often James Broussard himself did lashing and loading if that is dispositive; it is how often it had to be done; and it had to be done on every job by James or his relief. That James Broussard might have been off, or sick, or working on the other shift, does not control. It is hard to believe that Congress intended that the mathematics of probability, permutations and combinations could freak such a worker out from under the Longshore Act merely because the dice ran cold for a spell or his chances of working loadouts. A streak of freak chance should not determine a question of such

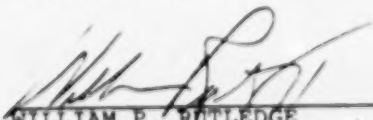
importance to working people. If he were an iron man who could work forever without sleep, food, or sickness, he would have worked every loadout; and, again, there was a loadout for every job; his employer did not make or build a single object that was not loaded out except the barbeque pits and bass boats James Broussard was ordered to build for middle management; that is the reason we dispute the time-card evidence and will continue to do so: they are no proof that James Broussard was not building ornamental burgler bars for the new company executive who just moved to town, while his time card was being charged to a hapless customer, some oil company waiting for maritime commerce to be carried over the sea and used therein.

The Shelf Act itself may provide jurisdiction since it incorporates the Longshorman Act. We realize this can be carried to silliness. Philosophically a miner in a Montanna iron ore mine might be called a ship builder because the ore winds up as steel in vessels. This would not do, but it is realistic to say that James Broussard was a platform builder in the very same sense that a shipyard worker is a ship builder. Thus it would seem that the Shelf Act covering these platforms and embracing the Longshoreman Act would provide jurisdiction if it is not otherwise provided.

At any rate, barbeque pits, bass boats and burgler bars are no defense to the jurisdictional assertions of James Broussard.


The writ should be denied.

Respectfully,

  
WILLIAM P. RUTLEDGE  
Attorney for James Broussard  
Domengeaux & Wright  
P. O. Box 51058  
New Orleans, Louisiana 70151-1058  
(504) 528-3075

CERTIFICATE OF SERVICE

I hereby certify that on 8<sup>th</sup> day of December, 1983,  
a true and correct copy of Brief of Respondent James Broussard  
Against Certiorari, and a copy of Motion To Proceed As A Pauper  
and Supporting Affidavit, has been forwarded, by pre-paid postage, upon  
Mr. Ben L. Reynolds, Mr. Robert M. Mahoney, Mr. Joshua T. Gillelan,  
counselors of record and the Solicitor General of the United States.

  
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WILLIAM P. BUTLEDGE  
Attorney for James H. Broussard

MOTION FILED  
DEC 9 1983

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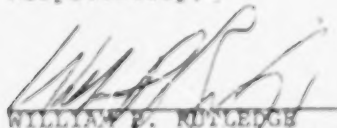
MOTION TO PROCEED AS A PAUPER AND  
SUPPORTING AFFIDAVIT

Respondent, James H. Broussard moves the Court for leave to file his response to the petition for writs under Rule 33.

No request has been made below to proceed as a pauper because there has been no necessity until now.

Affidavit of James H. Broussard sworn to herein to support his motion in this case.

Respectfully,



WILLIAM P. RUTLEDGE  
Attorney for James H. Broussard

Domengeaux & Wright  
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New Orleans, LA. 70151-1058  
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AFFIDAVIT IN SUPPORT OF MOTION TO  
PROCEED ON APPEAL IN FORMA PAUPERIS

I, James H. Broussard, being first duly sworn, depose and say that I am the Claimant Appellant, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

No.

Last date of employment was June 14, 1977.

Earning \$5.00 per hour, approximately \$450.00 per month.

2. Have you received with the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? Yes.

Social Security and Comp, less Social Security Disability.

3. Do you own any cash or checking or savings account?  
Yes.

Checking Account - No balance - Carried to pay bills only.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes.

1977 Oldmobile valued at \$600.00

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Four children: James Jr., Age 20 , Son

Jessica, Age 16, Daughter

Terisita, Age 14, Daughter

Jason, Age 7 Son

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

James H. Broussard  
JAMES H. BROUSSARD

SUBSCRIBED AND SWORN TO before me

this 7<sup>th</sup> day of Dec 1983

[Signature]  
NOTARY PUBLIC

[Signature]  
at death